

conviction for fraud in connection with a claim under the FECA; a beneficiary's incarceration based on any felony conviction; an employee's failure to report earnings from employment or self-employment; an employee's failure or refusal to either continue performing suitable work or to accept an offer of suitable work; or an employee's refusal to undergo or obstruction of a directed medical examination or treatment for substance abuse.

§ 10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?

(a) If the beneficiary submits evidence or argument prior to the issuance of the decision, OWCP will evaluate it in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument which is repetitious, cumulative, or irrelevant will not require any further development. If the beneficiary does not respond within 30 days of the written notice, OWCP will issue a decision consistent with its prior notice. OWCP will not grant any request for an extension of this 30-day period.

(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, OWCP will either continue payment or issue a decision consistent with its prior notice.

Subpart G—Appeals Process

§ 10.600 How can final decisions of OWCP be reviewed?

There are three methods for reviewing a formal decision of the OWCP (§§ 10.125 through 10.127 discuss how decisions are made). These methods are: reconsideration by the district office; a

hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). For each method there are time limitations and other restrictions which may apply, and not all options are available for all decisions, so the employee should consult the requirements set forth below. Further rules governing appeals to the ECAB are found at part 501 of this title.

RECONSIDERATIONS AND REVIEWS BY THE DIRECTOR

§ 10.605 What is reconsideration?

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."

§ 10.606 How does a claimant request reconsideration?

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Be signed and dated by the claimant or the authorized representative; and
- (3) Set forth arguments and contain evidence that either:
 - (i) Shows that OWCP erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by OWCP; or
 - (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

§ 10.607 What is the time limit for requesting reconsideration?

(a) An application for reconsideration must be received by OWCP within one year of the date of the OWCP decision for which review is sought.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

(c) The year in which a claimant has to timely request reconsideration shall not include any period subsequent to an OWCP decision for which the claimant can establish through probative medical evidence that he or she is unable to communicate in any way and that his or her testimony is necessary in order to obtain modification of the decision.

§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(3). If reconsideration is granted, the case is reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(3), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 20 days from the date sent to comment or submit relevant documents. OWCP will provide any such comments to the employee, who will have 20 days from the date the comments are sent to him or her within which to comment. If no comments are received from the employer, OWCP will proceed with the merit review of the case. Where a reconsideration request pertains only to a medical issue (such as disability or a schedule award) not requiring comment from the employing agency, the employing agency will be notified that a request for reconsideration has been received, but OWCP is not required to wait 20 days for comment before reaching a determination, except when that claimant is deployed in an area of armed conflict.

(b) A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. When all evidence has been reviewed, OWCP will issue a new merit decision, based on all the evidence in the record. A copy of the decision will be provided to the agency.

(c) An employee dissatisfied with this new merit decision may again request reconsideration under this subpart or appeal to the ECAB. An employee may not request a hearing on this decision.

§ 10.610 What is a review by the Director?

The FECA specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied. A review on the Director's own motion is not subject to